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2 the Track A and not Track B road. And so on relevancy  
3 grounds the Statement of Terms and Conditions cannot be used  
4 as any support in this Commission's determination when it  
5 does its consultation.

6 Now as to the affidavits, they constitute  
7 inadmissible hearsay, and so do Southwestern Bell's comments  
8 and interconnection agreements that have been filed, to the  
9 extent that they contain statements offered by Southwestern  
10 Bell to prove the matters asserted in those statements. And  
11 the importance of this hearsay rule in the Rules of  
12 Evidence, it cannot be understated. Hearsay statements  
13 inherently are unreliable. And fact finder - - For one  
14 reason, the fact finder is unable to determine or view the  
15 witness when he makes these statements in order to evaluate  
16 that witness' demeanor which is helpful in determining the  
17 probative value of those statements that have been made by  
18 the declarant. But, most importantly, the other parties  
19 have been prohibited from cross examining the declarants of  
20 the statements contained in the affidavits and other  
21 documents.

22 Now the goal of adjudicative proceedings or  
23 the goal of adjudications is to get to the truth, the  
24 truthfulness of the facts. And the way adjudications do  
25 that is by the adversarial process. And when we are not  
allowed to do any cross-examination, it hampers that

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2 adversarial process and it leads to - - you can only  
3 conclude that the facts are unreliable and do not have the  
4 foundation in truthfulness. It diminishes their probative  
5 value, in other words.

6 So allowing out-of-court statements into the  
7 record without the opportunity for cross-examination defeats  
8 this truth-seeking goal of adjudications because of their  
9 inherent reliability.

10 Now no party waived its right to cross  
11 examine Southwestern Bell's witnesses, which the ALJ  
12 implicitly seemed to state, when we agreed to the procedural  
13 order, the procedural schedule in this case, because when  
14 Southwestern Bell also agreed to that procedural schedule  
15 they did not waive their right to present witnesses merely  
16 by agreeing to that procedural schedule. And so if they  
17 didn't waive their right to present a witness or to submit  
18 testimony, clearly the other parties cannot be said to have  
19 waived their right to cross examine or to otherwise object  
20 to hearsay evidence or hearsay statements.

21 So Southwestern Bell has failed to prove the  
22 necessary facts to be granted its relief. Southwestern  
23 Bell's hearsay assertions of fact for which there is  
24 absolutely no factual support include these statements. I  
25 just wrote down a few statements that they have offered as  
proof of the matters contained in those statements. But we

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2 had no opportunity of cross-examination of the declarants of  
3 these statements.

4 For instance, one of their statements was  
5 that, "Brooks Fiber is a facilities-based provider." That  
6 is a factual statement, but there is no - - there was no  
7 cross-examination on how they came up with that  
8 determination.

9 Another one that, "Delays in implementing  
10 collocation with Brooks Fiber were caused by order revisions  
11 and changes in the requirements for electrical power made by  
12 Brooks Fiber." Clearly a hearsay statement.

13 Another one that, "Any disconnections  
14 occurring when a residential customer moves from  
15 Southwestern Bell's service to a CLEC's service may be  
16 unavoidable and very brief, and that Southwestern Bell's  
17 policy is that service outages will be kept to a minimum."  
18 That is another factual or out-of-court statement offered  
19 for proof of those matters that are asserted.

20 "That its OSS capabilities have been designed  
21 and tested to support significant commercial activity by  
22 competitive local exchange carriers in the same manner as  
23 those systems support Southwestern Bell telephone retail  
24 service ordering." Another hearsay statement.

25 "That Southwestern Bell offers  
non-discriminatory access to its poles, ducts, conduits and

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2 rights of way." Another statement made by Southwestern Bell  
3 that is hearsay, no evidentiary support.

4 "That the network element rates available  
5 through its interconnection agreements and contained in its  
6 Statement of Generally Available Terms are cost based."

7 "That the study that it submitted purported  
8 to demonstrate the potential beneficial effects of  
9 Southwestern Bell's entry into the interLATA market in  
10 Oklahoma." Purely hearsay. We had absolutely no  
11 opportunity to cross examine those statements or the  
12 motivations behind the declarants of that study.

13 In fact, all of the assertions that are  
14 contained in the affidavits submitted by Southwestern Bell  
15 are pure hearsay because of Southwestern Bell's refusal to  
16 allow any cross examination of the declarants.

17 But I'm going to leave that procedural  
18 argument and go to a substantive argument. Whether or not  
19 these are hearsay, whether or not - - Giving Southwestern  
20 Bell the benefit of viewing these as facts and viewing them  
21 in the light that is most favorable to Southwestern Bell,  
22 Southwestern Bell still has not satisfied the requirements  
23 of Section 271(c).

24 Section 271(c), which this Commission is  
25 supposed to consult with the FCC about, contains two tests.  
The Section 271(c)(1) test, which is the presence of a

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2 facilities-based competitor or Statement of Terms and  
3 Conditions. Either one or the other by the way, not both.  
4 Or it could be neither. But I will get to that in a  
5 minute. And the second test is Section 271(c)(2), the  
6 competitive checklist test. The requirements of both of  
7 those tests explicitly, as how the language in the Act  
8 reads, must be met.

9 Now the first test is the Track A versus  
10 Track B test. And this test should be examined before we  
11 even get to the competitive checklist because it is a  
12 threshold test. Southwestern Bell must satisfy the  
13 requirements of the first test, but there are only two  
14 mutually exclusive roads to satisfy the requirements of the  
15 first test, Track A or Track B, and Southwestern Bell is  
16 currently on Track A. And the only vehicle that is allowed  
17 on Track A, which are its interconnection agreements, the  
18 Statement of Terms and Conditions are expressly prohibited  
19 from being driven on the Track A road.

20 But Southwestern Bell, although it has  
21 started on the Track A road, has not completed or satisfied  
22 all of the requirements that are necessary to complete that  
23 journey.

24 Now the Track B road, well, let me explain  
25 that. The reason that they have not met the requirements is  
that there is not the presence of a facilities-based local

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2 exchange competitor in Southwestern Bell's territories which  
3 is providing facilities-based service to both residential  
4 and business subscribers, either exclusively or at least  
5 predominantly over its own facilities. That is not in  
6 existence. That is undisputed.

7 The testimony is in the record of Mr. Cadieux  
8 for Brooks Fiber where he stated that the residential  
9 service that is being currently provided, though not  
10 offered, because they're not marketing it - - And, by the  
11 way, let me speak to the statement made by Counsel for  
12 Southwestern Bell earlier that its, Brooks Fiber's, tariffs  
13 offer facilities-based local exchange service. I don't  
14 know. I have never seen a tariff that specifically offers  
15 facilities-based local exchange service. I believe that  
16 tariff offers local exchange service to residential  
17 customers. And I don't think it specifies, subject to  
18 check, facilities-based versus a reseller.

19 So Brooks Fiber is not a facilities-based  
20 competitor in Southwestern Bell's territory, because it is  
21 not offering, it is not even providing, facilities-based  
22 service to residential customers. And, in fact, the  
23 service it provides to its business customers is arguably  
24 not even predominantly over its own facilities because, for  
25 instance, it uses facilities that it leases through a tariff  
from Southwestern Bell, that's in the record, he testified

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2 to this, rather than purchasing unbundled elements. So even  
3 if you decided to include unbundled elements as the  
4 facilities owned by a competitor, you can't include  
5 facilities that they lease through a tariff as that  
6 company's own facilities. So there is no facilities-based  
7 competitor.

8 But Southwestern Bell relies on that. They  
9 focus in the Track B language on the language that says if  
10 there is no such provider, then they can come in on Track B.  
11 Well, that reading or interpretation of that language where  
12 because it says "no such provider," interpreting that is  
13 allowing them to immediately go to Track B and bypass all of  
14 those requirements of a facilities-based provider of service  
15 to residential and business on Track A is absurd, because  
16 what that means, the effect of that would be in order for  
17 Track A to not be totally emasculated by Track B if read  
18 that way would be that any Track A provider must already  
19 have completely duplicitous and ubiquitous network in place  
20 at the time that it comes and requests access and  
21 interconnection. And that's simply - - I mean, that is not  
22 going to happen, because how else can you define  
23 predominantly or exclusively facilities-based provider at  
24 the time they request access and interconnection unless  
25 their intent when they come in is to be such a provider. I  
think that is the way it needs to be read. That is the only

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2 logical and reasonable way to read that.

3           The second test that Southwestern Bell must  
4 meet the requirements of has also been failed, has also not  
5 occurred. It requires Southwestern Bell to be providing  
6 each of those checklist items in Oklahoma, not merely  
7 holding them out or making them available. If they were on  
8 Track B and we were looking at a Statement of Terms and  
9 Conditions, then it would be a lesser standard of making  
10 them available. And that makes sense, because Track B there  
11 is not going to a competitor out there that is taking these  
12 right then. I mean, there is not going to - - It is  
13 because of a result of a failure to negotiate by these  
14 competitors. That is not the case. There is no evidence of  
15 that. And each one of those fourteen checklist items must  
16 actually be provided.

17           Now Southwestern Bell argues that there is no  
18 requirement in the Act that there must be effective or  
19 meaningful competition as prerequisite for them to be  
20 granted interLATA authority. The Attorney General is not  
21 advocating that effective and meaningful competition should  
22 be further test. In fact, the Act, Section 271(c)(2), the  
23 competitive checklist, the fact that they must, each and  
24 every one of them, be provided necessarily entails that  
25 meaningful or effective competition must be in place,  
otherwise you are never going to have the provision of each

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2 one of these checklists. So while Congress did not  
3 expressly state that as a test, it is implied in there. And  
4 despite the arguments of Southwestern Bell that it need not  
5 provide each one of those, well, under Track A they must be  
6 providing interconnection and access. That is expressly  
7 stated in the Act. They must provide interconnection and  
8 access. And then when you go to (c)(2), interconnection and  
9 access must include each one of those checklist items. And  
10 so what is included in what must be provided must also be  
11 provided. And so if you have "must provide interconnection  
12 access," then you must provide those checklist items.

13 In fact, it is only the first thirteen items  
14 that must be provided, because the only item, and this even  
15 reinforces the Congressional intent here, that need not be  
16 provided whether it is Track A or B is the  
17 telecommunications services for resell. They need only be  
18 made available. That is expressly stated in the Act. But  
19 they only made that expressed exception for that fourteenth  
20 checklist item realizing that strictly resell competition is  
21 not the meaningful competition that the Congress intended.

22 So the Commission need not find that under  
23 Track A there is effective competition. But this Commission  
24 must find that each and every checklist item is being  
25 provided, not just being made available. And the Commission  
need not look very far to find that each and every one of

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2 these checklist items have not been provided and are not  
3 being provided as of the close of the evidentiary record in  
4 this case.

5 It has already been pointed out. I'm not  
6 going to go through the checklist items that have not been  
7 provided at this time except to state that the  
8 non-discriminatory interconnection and access to unbundled  
9 elements, the first two checklist items, requires the  
10 provision by Southwestern Bell of collocation, which is not  
11 being provided.

12 And one other example, the checklist item  
13 number 4 requires the provision of unbundled loops. There  
14 are no unbundled loops being provided by Southwestern Bell.  
15 The Commission really need not look any further and address  
16 each of the fourteen checklist items, because since each one  
17 must be provided as a prerequisite to their authority, if  
18 you find one, that is sufficient.

19 Now the consequences of premature interLATA  
20 approval. There are basically two, and each one, they're  
21 interrelated, but they fall in different markets.  
22 Premature, meaning before the existence of meaningful  
23 competition, which you can't consider under public interest.  
24 And the Act though, it requires the Section 271(c)  
25 consultation. It does not prohibit your consideration of  
other factors and passing that along to the FCC.

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2 Now one of consequences, there is no  
3 meaningful competition in Southwestern Bell's local market  
4 today. And premature approval will hinder, or may even  
5 prevent, meaningful local competition from developing,  
6 because Southwestern Bell will have less incentive to  
7 provide non-discriminatory access, and then their  
8 interconnection to competitors, and more incentive to deny  
9 or refuse such access and interconnection. And I think the  
10 - - before the competition develops in the local market you  
11 could say that there is an incentive on behalf of the IXCs  
12 to keep Southwestern Bell out of its markets. But Track B  
13 will be available to Southwestern Bell if this happens,  
14 because if they can show and this Commission certifies that  
15 AT&T, they have already requested each one of those fourteen  
16 point competitive checklists, there may be other ones who  
17 have requested such access and interconnection, but at least  
18 AT&T has, and if they have, if they are found to not being  
19 negotiating in good faith, then Southwestern Bell can bypass  
20 those initial requirements and the Statement of Terms of  
21 Conditions will then become relevant in its Section 271  
22 application.

23 So it is not going to be locked in. There is  
24 a way out for Southwestern Bell in this case. They can  
25 either open up their local markets, or AT&T, or some other  
IXC, could fail to negotiate in good faith. So it is not an

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2 all-or-nothing deal for Southwestern Bell where it is going  
3 to come out the loser.

4 Now the other market, of course, is the  
5 interLATA market. Now premature entry by Southwestern Bell  
6 before local competition develops will tend to - - I think  
7 it is a strong proposition that it will tend to reduce  
8 competition in that interLATA market over the long run  
9 because Southwestern Bell will be able to under cut the  
10 rates of the IXCs who now provide the dominant long distance  
11 service because of its ability to cross subsidize those  
12 lower rates with its still monopoly local exchange services.

13 CHAIRMAN GRAVES: And this body would not  
14 have any ability to continue to control rates and tariffs on  
15 a local exchange basis, and look at rates of return, and  
16 things like that?

17 MR. MOON: That's a good question. It is  
18 dependent entirely upon what happens across the street. If  
19 House Bill 1815 becomes law, you will not have that ability.

20 VICE CHAIRMAN ANTHONY: Well, we don't have  
21 to entirely blame it on what happens across the street.  
22 This Commission hasn't had an audit with a test year  
23 subsequent to 1989. So it is not as if we can brag about  
24 being Johnny on the spot all the time anyway.

25 CHAIRMAN GRAVES: That is because we settled  
662 which calls for it to occur next year. I mean, that was

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2 the agreed-upon settlement that we wouldn't have one until  
3 we filed one sometime this summer with the first rate case  
4 occurring in '98 if it were to occur.

5 MR. MOON: Before I close, Your Honors, I  
6 just want to address a couple of points. Mainly, what was  
7 brought up by Southwestern Bell initially was that it was  
8 going to invite Staff to - - they were going to open its  
9 doors wide open for Staff to come in and do an investigation  
10 between now and the time it has to - - or, I guess, May 1st.

11 Well, first of all, state law, this  
12 Commission's Rules, will now allow that to occur. I mean,  
13 the AG is very concerned with this type of activity that  
14 excludes the parties of record, the parties who are entitled  
15 to have access to the information to develop the record and  
16 litigate the factual issues which we have already done. And  
17 it is too late for this. But the record has already been  
18 developed. And this state law requirement of adjudication  
19 and the adjudication requirements that this Commission has  
20 imposed on itself, and which it must abide by under the  
21 Constitution, it is not preempted by this Federal Act. It  
22 is not inconsistent with any provisions. It just says you  
23 have to consult. Now the way you consult, you still have to  
24 follow the state law requirements in that regard.

25 So I do not think that it would be proper to  
accept Southwestern Bell's proposal to, in effect, just

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2 ignore the record that has been established in this cause, a  
3 record for which Southwestern Bell has shown a sufficient  
4 lack of evidence to support its position.

5 In conclusion, Your Honor, the Attorney  
6 General would urge that this Commission adopt in part and  
7 modify in part the ALJ's report. Adopt in it - - Adopt the  
8 report insofar as it finds that Southwestern Bell has failed  
9 to meet the requirements of Section 271(c), but modify it  
10 insofar as it does not address this public interest concern  
11 of the effects of premature entry by Southwestern Bell into  
12 the interLATA market, and modify it further by making it  
13 clear to the FCC about the unreliability of the facts that  
14 have been alleged by Southwestern Bell. Thank you.

15 CHAIRMAN GRAVES: Thank you.

16 Mr. Gray.

17 MR. GRAY: Your Honors, I will attempt to  
18 make my arguments very quick. I looked up at the  
19 Commission and it was like all your eyes are starting to get  
20 glassed over. So I will try to make it brief and I will  
21 just hit the highlights.

22 VICE CHAIRMAN ANTHONY: Basis for a contempt  
23 proceeding.

24 MR. GRAY: Your Honors, I would like to start  
25 off with the arguments made by Southwestern Bell, and work  
my way through as to the way the parties made their

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2 arguments and I will just hit the highlights.

3 First, I want to draw your attention to  
4 Southwestern Bell's statement about their SGAT, Statement of  
5 Terms and Condition. As we know, those went into effect by  
6 operation of law under 252(f). But I want this Commission  
7 to know that the way this schedule was set up, there was a  
8 compromise among the parties where we said, well, we have  
9 got the 20 case here, we have got the 64 case here, we were  
10 more concerned with the 64 case, so let's move the 20 case  
11 to the back burner for a little bit and we'll set a  
12 procedural schedule. So we do plan on going back and  
13 looking at the Statement of Terms and Condition.

14 Mr. Toppins makes the question about the "put  
15 us through the test." I think that is good. However, I'm  
16 concerned about the timing. There is not a lot of time to  
17 get this done. As Your Honors know, we have until on or  
18 before May 1st. We have to provide written consultation to  
19 the FCC as to what your position is in this matter.

20 Also, you know, to show how quickly times are  
21 changing, I just received a FAX from the FCC on a public  
22 notice wherein it set out an April 28th date for briefs and  
23 response to the Track A and the Track B. So, as you can  
24 see, we have got a lot of work to be accomplished between  
25 now and May 1st.

MR. TOPPINS: Excuse us. We have to go.

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2 CHAIRMAN GRAVES: It is nice to know they're  
3 adhering to that same strict schedule in promulgating their  
4 Universal Service Rules.

5 MR. GRAY: Also, Your Honor, there was some  
6 questions about the timing of the permanent rate matter.  
7 Your Honor, as you recall, we had originally thought, and  
8 when I mean we, the parties that participated in the 218  
9 case, we originally thought that we would have a quick  
10 decision from the 8th Circuit as to what methodology. And  
11 we have not gotten a decision. So that has been sort of put  
12 on the back burner, not by any fault of any party, but just  
13 due to the fact that we are still waiting to hear something  
14 from the 8th Circuit.

15 We are down to - - The comments made by MCI  
16 were talking about the Track A and Track B. I believe the  
17 ALJ's recommendation is consistent with what he ruled in the  
18 20 case. If you recall, in the 20 case he stated that Bell  
19 could file their SGAT under 252(f) but not for purposes of  
20 271. I believe he is consistent here.

21 When Brooks Fiber was giving their  
22 presentation, Mr. Anthony raised a question about, and the  
23 AG's office made reference also about, us going down and  
24 look at their facilities, and so forth, and the idea of the  
25 facts being outside the record. But, Your Honors, I would  
offer you today that this matter is not over. I agree that

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2 we would probably have some trouble in getting it in this  
3 proceeding, but this matter is not over. It will be back  
4 before us. So as much information as we can gather, we  
5 would like to do that.

6 And in all fairness to Southwestern Bell,  
7 they made their request upon Staff to go down there prior to  
8 the time we had the hearing. However, due to scheduling  
9 conflict, we just couldn't put it together.

10 Mr. Apple raised the question as to us  
11 holding Southwestern Bell's feet to the ground. My concern  
12 is in going back and reviewing the Act, only the FCC would  
13 have the ability to remove Southwestern Bell interLATA  
14 authority. This state commission would not have that  
15 ability, only the FCC.

16 Real quickly the arguments made by the  
17 Attorney General's office. I guess the Attorney General's  
18 office said the Commission can't make a determination. I  
19 guess I wouldn't be as strong. I would suggest that the  
20 Commission not make the determination that Bell has met the  
21 checklist.

22 You know, as Your Honors all recognize, this  
23 is a very unique proceeding. I don't think the APA ever  
24 envisioned this type of proceeding. I can't recall ever  
25 where this type of a proceeding has been levied upon the  
states. So I guess I would find it hard to fit it into one

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2 category. It is a moving target. Whether or not it is  
3 judicial or legislative, I don't think a determination can  
4 be made this easily.

5 On the hearsay evidence, as Your Honors  
6 recall - -

7 VICE CHAIRMAN ANTHONY: So what is your  
8 point?

9 MR. GRAY: Sir?

10 VICE CHAIRMAN ANTHONY: Okay. It is hard to  
11 know which category it fits in, or we don't do this sort of  
12 thing every day. So does that mean we ought to forget the  
13 rules or that we ought to abide more strictly to the rules?

14 MR. GRAY: Well, no, Your Honor. Just to  
15 suggest that it is not as black and white as it may appear.  
16 You have the APA that is there, but I think that the  
17 Commission would need to do more examining to make a  
18 determination as to how it exactly would fit the APA. I  
19 don't think the APA, like I say, would ever envision this  
20 type of proceeding.

21 And also to the extent that some of these  
22 provisions would conflict with the Act, the Act would  
23 supersede it. And that is stated in the Act itself. So, as  
24 I say, just from the standpoint of saying it is not clear.

25 VICE CHAIRMAN ANTHONY: The Federal Act would  
--

MR. GRAY: Would supersede state law.

VICE CHAIRMAN ANTHONY: All right. But this matter comes to us as an application on a Public Utility Docket. And is it your position that we should depart from the normal rules that we handle public utility docket cases?

MR. GRAY: No, Your Honor. I think this matter should proceed consistent with the Federal Act and with the state law.

VICE CHAIRMAN ANTHONY: Okay. Thank you.

MR. GRAY: And I don't believe that we have done anything that conflicts with that. I believe we are still in compliance with state and federal law.

Okay. I guess I'm sort of concerned that the AG's office would raise a concern as to how this proceeding took place about Bell submitting comments and testimony. Mr. Moon participated when the procedural schedule was established in this docket wherein it was spelled out how it would be handled. I think if he had a concern with it at the time the procedural schedule was put together, I think at that point that should have been brought forward.

Also I guess I'm concerned - - I wasn't sure if Mr. Moon was making reference to the fact that the Open Meetings Act is applicable to Staff. I would offer that the Open Meeting is not applicable to Staff. If Staff wants to have meetings with anybody, they're allowed to do that.

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2 They're not required to post it. They're not required to  
3 share the information with any other party. Although, you  
4 know, we very much would like the opportunity for all the  
5 parties to participate, we're not bound by that by law.

6 And, Your Honors, I believe that it is the  
7 position of the Commission Staff that the report of the  
8 Administrative Law Judge should be upheld. We believe that  
9 the Administrative Law Judge took the time, read all the  
10 testimony. He read the testimony, all the comments and  
11 participated in the proceeding. I believe that he is  
12 probably one of the few ones who has had an opportunity to  
13 sit down and talk with the parties and make the  
14 determination. So with that being said, we respectfully  
15 request that the Report of the Administrative Law Judge be  
16 upheld.

17 There is one final comment we would like to  
18 make. As you read through their comments, and so forth, you  
19 will see that there was no comments made by the Commission  
20 Staff, no testimony filed by the Commission Staff either.  
21 We filed this application with the intent of gathering  
22 information. So we didn't feel that it was necessary for us  
23 to present comments based on the fact that the industry  
24 participants would more know what is going on out there than  
25 the Staff would. But we have taken that information, we  
have read the testimony and comments and come to this

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2 conclusion.

3 So with that being said, Your Honors, we  
4 respectfully request that the Report of the Administrative  
5 Law Judge be upheld.

6 CHAIRMAN GRAVES: Thank, you. Mr. Toppins.

7 COMMISSIONER APPLE: Mr. Gray, just for the  
8 clarification of your comments relative to our authority  
9 relative to the application. I understand as to the FCC's  
10 domain, but we certainly still retain a great deal of  
11 authority relative to other issues that would be parallel to  
12 our abilities to, quote, "Hold people's feet to the fire."

13 CHAIRMAN GRAVES: i.e., local exchange?

14 MR. GRAY: Yes, sir. We still would retain.  
15 Yes, sir.

16 COMMISSIONER APPLE: I fully understand the  
17 differential.

18 MR. TOPPINS: I want to try not to keep us  
19 any longer than necessary. And I want to apologize at the  
20 outset for jumping around a little bit. When you are up  
21 against the whole world, you kind of have to - - when the  
22 comments are coming fast and furious, you have got to kind  
23 of make notes where you can. And I have got things all over  
24 the margins and everywhere.

25 Mr. Gray is correct when he tells you about  
how this docket got started. It is an unusual docket. And

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2 all we have to do is look at the wording of the application  
3 that Ernest Johnson filed that started the docket. And it  
4 was a docket to initiate a proceeding to determine what  
5 information the Commission will need in order to consult in  
6 a meaningful way with the Federal Communications  
7 Commission. And then at the end of the application it says  
8 that the applicant desires to begin the process of gathering  
9 the information to be utilized by the Commission in its  
10 consultation with the FCC. So this is not the ordinary  
11 docket where we are trying to set at rate or deciding a  
12 dispute between somebody.

13 When we set the procedural schedule, we had a  
14 lengthy discussion. I don't remember whether Mr. Moon was  
15 there or not, I think he was, and it was - - you could say  
16 it was agreed or not. It was determined that parties could  
17 file written comments or testimony, and that parties who  
18 filed testimony subjected those witnesses to  
19 cross-examination and parties who filed comments did not.

20 It is odd that Mr. Moon and others wanted our  
21 FCC filing to be kept out of the record here. I'm not  
22 exactly sure how you are supposed to consult on it if you  
23 don't have it before you.

24 There is a concern about whether we are  
25 relying on evidence or comments. I have never heard that  
argument raised in the many, many rulemaking proceedings we

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2 have out here where very, very big issues are decided by  
3 this Commission without one wit of evidence.

4 The point about - - that Mr. Moon makes that  
5 everything on the checklist has to be actually provided,  
6 that is not right. It has to be made available. If you  
7 just look at the dictionary, you will see that provided  
8 means made available. And the simple example that shows why  
9 that has to be the case, let's say there are ten big  
10 competitors, local competitors in Oklahoma, and they take  
11 95 percent of our business away. Well, what if not one of  
12 them asks for one of the checklist items. Not a one of them  
13 asks for White Page listings. They would then be able to  
14 come in here and say, no, you know, we have eviscerated  
15 their business, but they aren't actually providing that  
16 White Page listing, so they're out of luck. I mean, that is  
17 where that argument takes you.

18 Collocation. I appreciate Mr. Cadieux's  
19 remarks. And I don't mind him testifying about it. I asked  
20 our folks to give me a summary of where we are, and it is  
21 pretty much what he said, that there has been problems on  
22 both sides. We feel that Brooks has changed its  
23 requirements on nearly every order. They have withdrawn  
24 some orders because of changes. Our experience with Brooks,  
25 frankly, has highlighted some shortcomings in our process.  
We have held meetings with collocation customers to try to

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2 streamline the procedures, and we are revising our  
3 guidelines.

4 One of the problems is getting materials from  
5 vendors. We are working with the vendors to try to get  
6 these cage materials and other things delivered on a faster  
7 time. I think that - - I have seen the schedule now and we  
8 have got collocation cages being completed every week. And  
9 I think the problems are behind us on that. But your Staff,  
10 like I say, has already scheduled a visit on that.

11 Operational Support Systems. Comments have  
12 been made that some of these things aren't available until  
13 July and somehow we haven't met the checklist. Well, that  
14 is wrong. Under the Federal Act what we have to provide  
15 now, immediately, is what we provide to ourself in providing  
16 service. And those are being provided now. What AT&T is  
17 talking about are things that go beyond what we are  
18 providing now. And they're entitled to request those. And  
19 they're required to be provided when they're technically  
20 feasible. But this EDI example that they make is not  
21 something we provide ourself, it is something new, and there  
22 is no requirement under the Act that it be made available  
23 immediately.

24 The gas through the pipeline argument. That  
25 has been a recurrent theme of Joel Kline. It was a theme he  
made before the Congress passed the Act. Those kinds of

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2 arguments were rejected, the actual competition, effective  
3 competition, arguments.

4 I'm going to give you a matrix. I mean, the  
5 filings in this docket are admittedly thousands - - at  
6 least hundreds, if not thousands, of pages. And if you are  
7 going to have any meaningful review of where the problems  
8 allegedly are or not, you are going to need a road map to  
9 that. And I will provide you with a matrix that shows you  
10 every checklist item, what the complaints have been and what  
11 our response is.

12 I would like to go through a few of the  
13 things that you are going to see there that are just totally  
14 off the wall. AT&T complains that we have not met the  
15 interim number portability checklist item because we are not  
16 providing a form of interim number portability called route  
17 indexing. The Federal Act does not require route indexing,  
18 as AT&T suggests. Instead, it requires remote call  
19 forwarding or direct inward dialing. And these are the  
20 methods that we provide. And those are the methods that are  
21 set out in the Federal Act.

22 The FCC came along and issued a seven or 800  
23 page order implementing the Act, and they did not require  
24 route indexing, they required remote call forwarding or  
25 direct inward dialing. AT&T brought the issue to this  
Commission last year in an arbitration case and they said we